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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/759,774

01/16/2004

Philip Barthram

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02/11/2009

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EXAMINER

BROPHY, MATTHEW J

ART UNIT

PAPER NUMBER

2191

NOTIFICATION DATE

DELIVERY MODE

02/11/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/759,774

Applicant(s)

BARTHRAM ET AL.

Examiner

MATTHEW J. BROPHY

Art Unit

2191

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 7-23, 29-43, 45, 51-65, 67, 73-87, and 90-106.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Wei Y Zhen/

Supervisory Patent Examiner, Art Unit 2191

In remarks, Applicant Argues:

Although Aronberg relates to "a system for distributing software in a customized configuration, to pre-selected computers in a network environment" and includes a workstation running a console for "[creating] distribution control information which dictates how the software is distributed and to what agent based workstations under a given set of conditions" (Aronberg, Abstract), the condition expression builder of Aronberg is client based rather than user based. Specifically, Aronberg discloses that "a condition expression builder... controls which computer should install the software" and that such conditions "may be based on the name of the computer running the agent, a group membership of the computer running the agent, or hard disk capacity of the computer running the agent." (Aronberg, Column 3, lines 8-14). Because the system of Aronberg is computer-centric rather than user-centric, Aronberg does not disclose, teach, or suggest "... identifying a plurality of network computers in an enterprise system that are used by a selected one of a plurality of users, the plurality of enterprise computers representing all of the network computers in the enterprise system that are used by the selected user," as recited in Claim 1. For analogous reasons, Aronberg does not disclose, teach, or suggest "identifying, as target computers to receive a modification, all of the plurality of network computers in the enterprise system that are used by the selected user," as recited in Claim 1.

Examiner's Response:

Examiner respectfully disagrees. First it should be pointed out that applicant seems to have plainly ignored the portion of Aronberg (Col. 2, Ln 1-8) that examiner pointed out on page 5 of the previous office action. Here, Aronberg shows an option of distribution software based on "user name". Each workstation (computer) associated with a workstation profile that includes the selected "user name", i.e. all the computers associated with a given user name, are selected for distribution. Applicant's distinction between "user-centric" and "computer-centric" bares little weight here, because the "user name" distribution option distribute to all computers associated with that user name. Therefore, this limitation is taught by Aronberg.

In remarks, Applicant Argues:

In the Office Action, the Examiner identifies that Okada discloses that "one user has a plurality of terminals." (Office Action, page 4, citing Column 7, lines 44-53). As identified by the Examiner, "Fig. 6 [of Okada] shows information and by the host computer 11 when one user has a plurality of terminals." (Okada, Column 7, lines 30-31). Specifically, and as described above, the user information maintained after a purchase transaction includes "the user identifier UID of 01 (UID=01), the user name, information (number) of a cash card of the user, and purchase information of the software program." (Okada, Column 7, lines 32-35). "The purchase information shows that the user having the user identifier UID of 01 bought the software programs LOTUS-WIN, FM HISHO, LOTUS, and OASYS." (Okada, Column 7, lines 40-43). Although Figure 6 specifically states that "three terminals of PC98, TOWNS, and FMR, belong to the user having the user identifier UID of 01," information cannot be maintained regarding these user devices unless the user registers the individual computers or attempts to access the terminal center from an unregistered computer. (Okada, Column 7, lines 44-53; Column 5, lines 6-26). In the Response to Arguments section of the Office Action, the Examiner states that "no unregistered use is taught in the system [of Okada]." (Office Action, page 26). Applicants submit that this is false. For example, with regard to Figure 6, Okada stipulates that "[t]hrough OASYS has been installed in the terminal type FMR, no terminal identifier MID is given to FMR because FMR has not been registered in the host computer 11." (Okada, Column 8, lines 1-4 (emphasis added)). Thus, it follows that the user has attempted to copy a software program (i.e., OASYS, in this example) to FMR without authorization. (Okada, Column 7, lines 44-53; Column 5, lines 6-26). Otherwise, there would be no way for the system of Okada to be aware of the FMR terminal.

For at least these reasons, Applicants respectfully submit that Okada does not disclose, teach, or suggest "... identifying a plurality of network computers in an enterprise system that are used by a selected one of a plurality of users, the plurality of enterprise computers representing all of the network computers in the enterprise system that are used by the selected user," as recited in Claim 1. First, since Okada indicates that information is only stored for terminals having previously accessed the software distribution system or for terminals that are registered by the user, there is no disclosure in Okada that the terminals of PC98, TOWNS, and FMR represent "all of the network computers in the enterprise system that are used by the selected user," as recited in Claim 1. As shown above, Okada clearly discloses unregistered use, despite the Examiner's assertions to the contrary. For analogous reasons, Okada does not disclose, teach, or suggest "identifying... all of the plurality of network computers in the enterprise system that are used by the selected user," or "identifying, as target computers to receive a modification, all of the plurality of enterprise computers that are used by the selected user," as recited in Claim 1. Finally, Okada merely discloses maintaining information related to software programs previously sold. However, Okada does not disclose, teach, or suggest "target computers to receive a modification," as recited in Claim 1.

Examiner's Response:

Examiner respectfully disagrees. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Because the FMR terminal does not include a terminal identifier and is not registered with the host computer it is not considered part of the system. Conversely, Applicant's claims read in part "all of the network computer in the enterprise system that is used by the selected user." In other words, the host computer 11's knowledge of the FMR terminal determines if the FMR is part of the system (i.e. registered with the host terminal through the process taught in FIG. 9.) Further, as described above, Aronberg teaches the distribution to the entire registered computer associated with a given user name.

In remarks, Applicant Argues:

For example, the proposed Aronberg-Okada combination does not disclose, teach, or suggest that the "selecting and modifying are performed when the user becomes newly associated with at least one of the target computers," as recited in Claim 91. In the Office Action, the Examiner relies specifically on Aronberg for disclosure of the recited claim elements. (Office Action, pages 8-9). Applicants

respectfully disagree, however, with the Examiner's determination that Aronberg discloses "selecting and modifying are performed when the user becomes newly associated with at least one of the target computers," as recited in Claim 91.

The first cited portion merely discloses that a "user at the administrator, i.e., console 101" sets the criteria for specifying which computers receive the application. (Aronberg, Column 4, lines 52-57). Thus, the cited portion only indicates that an administrator controls the distribution process. (See also, Aronberg, Column 4, lines 48- 61). An administrator is not a new user and the administrator console is not target computer to receive the distribution. Accordingly, Column 4, lines 52-57 do not disclose, teach, or suggest "selecting and modifying are performed when the user becomes newly associated with at least one of the target computers," as recited in Claim 91. The Examiner has responded by saying that "the claim limitation in question is '...when the user becomes newly associated with at least one of the target computers.' User (admin) instead creates the association and therefore anticipates this limitation." (Office Action, page 27). However, this statement ignores an explicit portion of the claim limitation in question - "wherein selecting and modifying are performed when the user becomes newly associated." Even if the "User (admin)" of Aronberg does create the association, there is no indication that the selecting and modifying of Claim 91 occur when this association occurs.

The second cited portion of Aronberg discloses "a condition expression builder which controls which computer should install the software onto itself from the file server." (Column 3, lines 8-10). As stated above, "[t]he condition may be based on the name of the computer running the agent, a group membership of the computer running the agent, or hard disk capacity of the computer running the agent." (Aronberg, Column 3, lines 8-14). Thus, the cited portion demonstrates that Aronberg discloses a system that is computer-centric rather than user-centric. There is no disclosure of a user becoming newly associated with a computer. Accordingly, Column 3, lines 8-14 do not disclose, teach, or suggest "selecting and modifying are performed when the user becomes newly associated with at least one of the target computers," as recited in Claim 91.

Like the other cited portions, the third cited portion of Aronberg discloses "custom configuration of each workstation or group of workstations from the administrator's console." (Aronberg, Column 1, lines 41-45). However, as discussed above, the mere disclosure of an administrator controlling the distribution process is not analogous to Applicants' claim elements. An administrator is not a new user and the administrator console is not target computer to receive the distribution. The computer-centric distribution process of Aronberg allows merely allows an administrator to control which computer should install the software onto itself from the file server based on the name of the computer running the agent, a group membership of the computer running the agent, or hard disk capacity of the computer running the agent. (Column 3, lines 8-14). Accordingly, Aronberg and, thus, the Aronberg-Okada combination does not disclose, teach, or suggest that "selecting and modifying are performed when the user becomes newly associated with at least one of the target computers," as recited in Claim 91. For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claim 91.

Examiner's Response:

Examiner respectfully disagrees. Applicant's argument seems to first center around the contention that "There is no disclosure of a user becoming newly associated with a computer" which examiner asserts is erroneous. 602 "cognet users" of FIG. 6 shows an Admin GUI where the administrator can associate users with groups of computers (e.g. 486x, laptops, petiumum etc). This is further explained with regards to 1307, FIG. 6: "Checking the check-box causes the checked user to be added to the selected group 1307." (Col. 8, Ln 10-11.) Further, regarding the "selecting and modifying are performed when the [association happens] ..." because as described above, the system is able to distribute based on "user name" the "condition express builder" selects and runs the modifying jobs when the user is associated with a computer group. (Col. 2, Ln 1-8, Col. 3, Ln 3-10) ("the conditions may be based on...a group membership of the computer...").

Therefore, examiner's rejection is maintained.